IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10997 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B S GOSWAMI DEPUTY CHITNIS

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 10997 of 1994

MR IS SUPEHIA for Petitioner No. 1

Mrs. Manisha L. Shah, AGP for Respondent No. 1-2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 18/10/2004

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India, the petitioner has, inter alia,

challenged the order dated 26th August 1993 (Annexure "D"), passed by the respondent No.1, Gujarat Panchayat Services Selection Board, Ahmedabad, whereby, an amount of Rs.9081/-, being difference of salary paid to the petitioner, is ordered to be recovered on the ground that the petitioner is not entitled to the pay-scale granted to him as per the order dated 15th April 1991, (Annexure "A"), whereby, the petitioner was placed in the pay-scale of 1640-2900 in the cadre of Deputy Mamlatdar. The said order dated 15th April 1991 was passed in pursuance of the notification dated 10th March 1991 (Annexure "B") under the Gujarat State Services (Revision of Pay-scale) Rules, 1987.

2. The order dated 15th April 1991 was passed subject to the provisions of Notification dated 1st June 1987 of the Finance Department and it was also subject to the audit by the Pay & Accounts Department with regard to pay fixation and whatever recommendations and suggestions that may be made by the said Department.

3. It is the case of he petitioner that the petitioner was initially appointed as Clerk on 8th July 1973 in the office of the respondent-Board and, thereafter, came to be promoted to the post of Deputy Mamlatdar on 30th June 1990. The designation of Deputy Mamlatdar has been changed to Deputy Chitnis and, therefore, the petitioner was granted revised pay-scale by order dated 15th April 1991 subject to certain conditions.

4. Subsequently, by order dated 16th November 1991, the respondent No.1 cancelled the said order of 15th April 1991 on the ground that in the notification dated 20th March 1991, in stead of mentioning pay-scale, 'Cadre Pay' is mentioned and the said order is annexed at Annexure "C" to the petition. The main ground for cancellation of the pay-fixation of the petitioner in the pay-scale of Rs.1640-2900 is that the petitioner was not belonging to the particular cadre and an audit objection was raised to that effect add, therefore, the earlier order dated 15th April 1991 was cancelled and, consequently, the order of recovery of difference of salary was passed on 26th August 1993. Against the said order, the petitioner filed Appeal No.450 of 1993 before the Gujarat Panchayats Service Selection Board, which was also ultimately rejected by a reasoned order passed by the Secretary on 19th January 1994.

5. The petitioner, thereafter, approached the Gujarat Civil Services Tribunal by filing Appeal No.118

of 1994 which was dismissed by the Tribunal vide order dated 24th August 1994 on the ground that the Tribunal had no jurisdiction to entertain the appeal against the impugned order. However, the Tribunal has discussed the subject matter of challenge in detail and, ultimately, came to the conclusion that the Tribunal had no jurisdiction to entertain the appeal.

6. In this petition, the petitioner has challenged the order dated 16th November 1991 cancelling the order of fixation of pay in the pay-scale of Rs.1640-2900, and the order of recovery dated 26th August 1993 and, subsequently, the order dated 19th January 1994 passed in appeal by the respondent No.1.

7. The main contention of the petitioner is that, so far as the Notification of the Finance Department, State of Gujarat, dated 20th March 1991, is concerned, the pay-scale of Aval Karkun/Deputy Mamlatar was Rs.425-800 under the sub-heading of Gujarat Panchayat Service Selection Board and the revised pay-scale is mentioned as 'cadre pay'. The petitioner further stated that under the heading of Revenue Department, the pay-scale of the Deputy Mamlatdar was Rs.425-800 as per the present scale and the revised pay-scale was Rs.1640-2900 and, therefore, the duties performed by Aval Karkun/Deputy Mamlatdar under the Departments of the Gujarat Panchayat Service Selection Board are the same that can be performed by the Deputy Mamlatdar of the Revenue Department. The learned advocate for the petitioner further submitted that the respondent No.1-Board has recommended equivalent of pay-scale by resolution dated 30th November 1993 at Annexure "H" and, therefore also, the petitioner was entitled to the revised pay-scale of Rs.1640-2900. The learned advocate for the petitioner has relied upon the Resolution dated 15th December 1981 of the Finance Department of the State of Gujarat, which states that the present pay-scale of Aval Karkun (Deputy Mamlatdar) was, at the relevant point of time, Rs.200-430 and revised as Rs.425-800 as per the Gujarat Civil Service (ROP) Rules, 1975. Therefore, the case of the petitioner is that, since 1975 ROP Rules, the post of Aval Karkun (Deputy Mamlatdar) is on par with the post of Deputy Mamlatdar, Revenue Department, and the revision of pay, which is applicable to the post of Deputy Mamlatdar (Revenue Department) of 'cadre pay' be made available to the petitioner, who is also Deputy Mamlatdar in the Panchayat Service Selection Board.

8. On behalf of the respondents, affidavit-in-reply

is filed by Mr.R.S. Arya, Under Secretary, Panchayats & Rural Housing Department. It is contended on behalf of the respondents there is an inherent dichotomy between two posts of Deputy Mamlatdar under the Panchayat Service Selection Board and the Department of Revenue and constitution of the Gujarat Service Panchayat Selection Board was as per Section 210 of the Gujarat Panchayats Act, 1961, and it came into existence for the purpose of recruitment of personnel for various cadres of the Panchayat. It is further submitted that, at the relevant point of time, the staff of the Board was taken from the Collectorates on deputation and, accordingly, Aval Karkun from the Collectorate was taken on deputation in the office of the Board in the pay-scale of Rs.145-215, which was revised from time to time i..e. from 145-215 to 200-430 with effect from 1.6.1967 and to Rs.425-800 from 1.1.1973. The pay-scale of Aval Karkun in the office of the Board was revised to Rs.1400-2600 with effect from 1.1.1986. It was clearly mentioned in the affidavit-in-reply that the persons appointed to the post of Aval Karkun by promotion in the office of the Board did not belong to the cadre of Aval Karkun in the Revenue Department and in the Revenue Department a clerk is required to pass the Revenue Qualifying Examination for promotion to the post of Aval Karkun. Such Aval Karkuns were eligible for promotion to the post of Mamlatdar and subsequently such persons were designated as Deputy Mamlatdars and, therefore, the Aval Karkuns in the office of the Board were also designated as Deputy Mamlatdar. It is further submitted that the petitioner was not appointed by the Collector and was not eligible for promotion to the post of Mamlatdar since he was not eligible to appear in the Revenue Qualifying Examination. It is further submitted that since the petitioner did not belong to the cadre of Deputy Mamlatdar under the Revenue Department, the order dated 15th April 1991 granting the revised pay-scale to the petitioner from Rs.1400-2600 to Rs.1640-2900 was rightly cancelled by order dated 16th November 1991.For being eligible for the said pay-scale, one has to belong to the cadre pay of the Revenue Department and, therefore, the recovery was rightly made by the order dated 26th August 1993.

9. Mr. I.S. Supehia, the learned advocate for the petitioner, has submitted that the order of cancelling revision of pay in the pay-scale of Rs.1640-2900 passed by the Authority on 16.11.1991 and the order of recovery dated 26.8.1993 and order in appeal passed on 19th January 1994 are unjust, unreasonable and arbitrary and discriminatory and, therefore, violative of Article 14 of the Constitution. The learned advocate for the

petitioner has also relied upon the various notifications annexed with the petition. He has further submitted that by order dated 15th April 1991, the petitioner was rightly placed in the revised pay-scale of Rs.1640-2900 in view of the Government Notification dated 20th March 1991 and particularly the recommendation vide Resolution dated 30.11.1993 of his own department, whereby, the revised pay-scale was recommended.

10. Learned Assistant Government Pleader, Mrs.Shah, has taken me through various contentions raised in the affidavit-in-reply. The learned Assistant Government Pleader has submitted that, since the petitioner never belonged to the cadre of Deputy Mamlatdar of the Revenue Department, he ought not to have been placed in the revised pay-scale of Rs.1640-2900. The learned Assistant Government Pleader has further submitted that the order of revising the pay-scale of the petitioner was subject to certain conditions as laid down in the said order, namely, Notification dated 1st June 1987 of the Department of Finance and the suggestion that may be made by the Auditors of Pay & Accounts. The learned Assistant Government Pleader has further submitted that the appeal filed by the petitioner was also rejected by a reasoned order dated 19th January 1994 by the respondent No.1 and even while rejecting another appeal of the petitioner, the Tribunal has observed on correctness of granting the revised pay-scale to the petitioner. However, the said appeal was rejected by the Tribunal on the ground of jurisdiction. The learned Assistant Government Pleader has further submitted that proposal made by the respondent No.1 by resolution dated 30th November 1993, at Annexure "H", was recommendatory in nature and the said proposal was also not accepted by the Government by letter dated 15th December 1993, and it was also referred to by the Appellate Authority in its order dated 19th January 1994.

11. In support of her contentions, the learned Assistant Government Pleader has relied upon the judgment of the Supreme Court in the case of State of Maharashtra vs. Association of Court Stenos, P.A., P.S. and another, reported in AIR 2002 Supreme Court 555, with regard to fixation of salary, allowances etc. and power of High Court while exercising discretionary jurisdiction. The learned Assistant Government Pleader has relied upon paragraphs 5 and 6 of the said judgment and has submitted that the case of the petitioner is not worth requiring consideration since the petitioner was not entitled or eligible to the revised pay-scale of Rs.1640-2900. The learned Assistant Government Pleader

has further relied upon the judgment of the Supreme Court in the case of Govt. of A.P. and another vs. P. Hari Hara Prasad and others, reported in (2002) 7 Supreme Court Cases 707, where the Supreme Court observed that the High Court cannot, in exercise of its jurisdiction under Article 226, examine the nature of duties of employees in two different services and grant parity of pay between them on that basis. This judgment was relied upon to support the submissions made in the affidavit-in-reply that the duties performed by the Deputy Mamlatar in the Revenue Department and the Deputy Mamlatar of Panchayat Service Selection Board are different and particularly the Deputy Mamlatdar in the Revenue Department have to perform the duties under the Bombay Land Revenue Code, and, some times, they have to work as Executive Magistrate also.

12. Learned advocate, Mr. I.S. Supehia, appearing for the petitioner has relied upon

(i) the Oral Judgment dated 4th April 2001 of the Division Bench of this Court in Letters Patent Appeal No.578 of 2000 in Special Civil Application No.2196 of 1999 in the case of I.C. Patel vs. Gujarat Housing Board and another;

(ii) the judgment in the case of Sahib Ram vs. State of Haryana and others, reported in 1995 Supp (1) Supreme Court Cases 18,

(iii) the judgment in the case of Shyam Babu Verma and others vs. Union of India and others, reported in (1994) 2 Supreme Court Cases 521,

with regard to recovery of excess payment made to the employees for no fault on their part.

13. I have heard the learned advocates for both the parties at length.

14. I do not find any merit in the submission of the learned advocate for the petitioner in as much as the order of granting revised pay-scale to the petitioner in the pay-scale of Rs.1640-2900 from the pay-scale of Rs.1400-2600 was subject to certain conditions as stated in the order itself, namely,Government Resolution of Department of Finance dated 1.6.1987 and the audit objections and modification that may be raised with regard to grant of revised pay-scale, and the petitioner had accepted the revision of pay on the aforesaid terms and conditions. Annexure "B" to the petition, notification dated 20th March 1991, clearly mentions about the post of Deputy Mamlatdar under the Revenue Department for revision of pay from Rs.425-800 to Rs.1640-2900, and, so far as the post of Aval Karkun and

Deputy Mamlatdar under the head of Gujarat Panchayat Service Selection Board are concerned, it mentions about 'cadre pay' in the revised pay-scale. It is clearly established that, at no point of time, the Government of Gujarat has accepted the proposal submitted by the Department of Panchayat vide Resolution dated 30th November 1993 and, in terms, it was specifically rejected by letter dated 15th December 1993, which was not conveniently brought on the record of the petition by the petitioner. The contention of the petitioner that the post of Aval Karkun/Deputy Mamlatdar in the Gujarat Panchayat Service Selection Board is for, all purposes, equivalent to the post of Deputy Mamlatdar in the Department of Revenue, cannot be accepted in view of the fact that the nature of duty to be performed by the Deputy Mamlatdar in the Revenue Department is totally different and particularly as stated in the affidavit-in-reply, the mode of recruitment to the post of Clerk in the Revenue Department as well as for the post of Deputy Mamlatdar in the Revenue Department presupposes passing of Revenue Qualifying Examination and, accordingly, the Deputy Mamlatar in he Department of Revenue is totally a different entity and entails the pay-scale accordingly.

15. The petitioner cannot be given the revised pay-scale of Rs.1640-2900 also on the ground that the constitution of the Panchayat Service Selection Board is under Section 210 of the Gujarat Panchayats Act, 1961, and the personnel like the petitioner were brought from the Collectorate on deputation and, right from the beginning, their pay-scale was different and it was revised from 145-215 to 200-430 with effect from 1.6.1967 and to Rs.425-800 from 1.1.1973 and lastly it was revised to Rs.1400-2600 with effect from 1.1.l986. This clearly shows that Aval Karkun/Deputy Mamlatdar is performing their duties and drawing the pay-scale accordingly and not on par with the Deputy Mamlatar of the Revenue Department. The said pay-scale of Rs.1400-2600 with effect from 1.1.1986 was prescribed for the Deputy Mamlatdar working the office of the Board and continued in the same pay-scale even after the change of designation, namely, Deputy Mamlatdar to Deputy Chitnis. The pay-scale of Deputy Mamlatdar (now Deputy Chitnis) working under the Board was never raised to Rs.1640-2900 and, therefore, the petitioner cannot be given the revised pay-scale of Rs.1640-2900. It is clearly borne out from the record that the petitioner has acquiesced himself in the terms and conditions laid down while granting the benefit of revised pay-scale by order dated 15th April 1991.

16. The learned advocate for the petitioner has, lastly, submitted that the amount of recovery order dated 26th August 1993 is not be executed and implemented since this Court had issued Rule on 17.6.1995 and the ad-interim relief was continued, whereby, the recovery of difference of pay-scale granted to the petitioner was stayed. The learned advocate for the petitioner has contended that the petitioner was not at fault when he was paid salary on the higher pay-scale of Rs.1640-2900 for a number of years. Therefore, in view of the Oral Judgment dated 4th April 2001 of the Division Bench of this Court in Letters Patent Appeal No.578 of 2000 in Special Civil Application No.2196 of 1999 in the case of I.C. Patel vs. Gujarat Housing Board and another, the order of recovery dated 26.8.1993 is required to be quashed and set aside. In my view, this submission deserves consideration.

17. In view of the above factual aspects, the position of law, and the judgments of the Supreme Court as referred to hereinabove, it cannot be said that the order of the respondents dated 15th April 1991 (Annexure "A") which was cancelled by the order dated 16th November 1991 and the order of recovery dated 26th August 1993, confirmed in appeal by order dated 19th January 1994, can be said to be arbitrary, unreasonable, discriminatory in any manner and, therefore, the petition fails to the above extent.

18. In the result, the order passed by the respondent-Authority dated 16.11.1991 and the order dated 26th August 1993 as confirmed in Appeal vide order dated 19th January 1994 are hereby confirmed. Since grant of higher pay-scale to the petitioner was made by the Authority, and the petitioner cannot be held responsible, and, therefore, in view of the decision of the Letters Patent Appeal No.578 of 2000 in Special Civil Application No.2136 of 1999 dated 4th April 2001, the order of recovery dated 26th August 1993 is quashed and set aside accordingly. Rule is made absolute to the aforesaid extent, with no order as to costs.

(Anant S. Dave, J.)
(swamy)